IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 510 OF 2005

Sima Laxman Dhayagude & Ors. ..Petitioners.

Versus

Rajabai H. Maharnavar & Ors. ..Respondents.

Mr. K.B.Sonwalkar for the Petitioners.

CORAM : S. A. BOBDE, J.

DATED : 27TH JUNE, 2005.

P.C.:

1. This petition is against the order of the Ist Ad hoc Additional District Judge, Pandharpur dated 16th October, 2004, allowing the defendant No.2's Appeal against the order passed by the Second Joint Civil Judge, J.D. Malshiras, granting an injunction against defendant No.2. The petitioner No.1 is the plaintiff. She has sued the defendants for a declaration that the sale -deed as executed by the Respondent No.1, her sister in favour of the other respondents is illegal and not binding on her. The

Petitioner is the daughter of Laxman through Yashoda. Laxman subsequently married Kisabai. The defendant - respondent No.1 is Laxman's daughter through Kisabai. Some time in the year 1991, Laxman, either in pursuance of a family arrangement or an oral partition, which is not clear today, divided his properties and got the revenue authorities to make entries in the revenue records accordingly. Thus Gut Nos. 11/3, 18/3, 19/1, 19/4, 128/1 were entered in the name of Rajabai, Respondent No.1 and Gut No. 632/3 in the name of the Petitioners.

2. The revenue records also shows that the entries in respect of the properties were not only recorded in the name of the sisters but they were independent cultivators of their respective lands. Rajabai sold her property on 23rd October, 2000 to one Shankar and Kantabai, the respondents Nos. 2 and 3 respectively. The plaintiff then filed the suit for partition, separate possession and injunction and he also claimed temporary injunction. The temporary injunction was granted by the trial court, restraining the purchaser from obstructing the alleged possession of the petitioners.

3. This order has been reversed by the Appellate Court. Having heard the learned counsel for the petitioners, I see no reason to interfere with the finding of the Appellate court. There is clear division of the properties between the two sisters i.e. petitioner No.2 Sima and Respondent No.1 Rajabai at the hands of their own father, who applied for corresponding change in the mutation entries. The Revenue records shows independent cultivation of their respective shares by the two sisters. Therefore, the other sister Rajabai, the respondent No.1 herein, has sold her share and the Appellate court has rightly reversed, the injunction granted by the trial court. There is nothing on record to show that the petitioner took any objection to the mutation entries made by her father, dividing the properties between his two daughters through different wives. In any case, the respondent Nos. 2 and 3 appear to be prima facie bonafide purchaser of the value without notice and any injunction against such a person, would result in injustice. I am, therefore, of the view that there is no merit in the petition. It deserves to be dismissed. The trial court shall decide the suit uninfluenced by any of the observations of the appellate court or of this Court, as expeditiously as

possible.

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